

# THE STATE BAR OF CALIFORNIA

## MINUTES

### BOARD OF GOVERNORS SPECIAL MEETING

#### SAN FRANCISCO

**APRIL 16, 2003**

*(Pursuant to the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar, article 2, section 2, section 6027 of the Business and Professions Code, and Article IV, Section 6 of the Rules and Regulations of the State Bar of California)*

The Board of Governors of the State Bar of California convened in the Board Room of the State Bar Office, 180 Howard Street, San Francisco, at 9:10 a.m. on Wednesday, April 16, 2003, James E. Herman presiding.

The following members of the Board of Governors were present: Anthony P. Capozzi, Janet M. Green, David M. Marcus, Roderick A. McLeod, Joel S. Miliband, Robert K. Persons, Russell Roeca, Windie O. Scott, John G. Snetsinger, Dorothy M. Tucker, John K. Van de Kamp, Chantel L. Walker and Nancy Hoffmeier Zamora.

The following members of the Board of Governors participated via conference call: Matthew E. Cavanaugh and James O. Heiting.

The following members of staff were present: Starr Babcock; Jerome Braun, Francis P. Bassios, Kathleen Beitiks, Phyllis Culp, Randall Difuntorum, Larry Doyle, Judy Garlow, Francisco Gomez, Dean Kinley, Robert A. Hawley, Karen Hagelund, Judy Johnson, Carol Madeja, Marie M. Moffat, Mike Nisperos, Mary Viviano, Pam Wilson, Lawrence Yee and Mary Yen.

Also present: Mike McKee, *The Recorder*.

30 The President reported on the following:

31 He mentioned that he and the executive director would be meeting with the members of the Legislature regarding the one-year, flat fee bill.

32 He stated that he had attended the Chief Justice's annual State of the Judiciary Address in Sacramento, and that the reduction of the judicial budget is severely impacting the courts, as well as the delivery of justice to the people of California. He said that he would be meeting with court personnel and bar leaders to discuss how the Bar can assist the courts in this time of budgetary crisis.

33 The matter of telephonic voting was discussed and the President stated that such voting is allowed at special meetings of the Board under existing rules.

- 34 He mentioned that the Bar's Antitrust and Unfair Competition Law Section is continuing to hold seminars on *Business and Professions Code* section 17200 seminars, the state's Unfair Competition Law; and that these seminars are being very well attended.
- 35 The Bar Leaders Conference has been rescheduled and will now take place on Thursday, September 4, 2003, at the Bar's Annual Meeting in Anaheim. Topics will include governance, fiduciary responsibility and communicating with Bar members and the media. A team of national and local speakers will help prepare new bar association presidents for their new duties and challenges. Board member Windie Scott will work with staff to plan this event.
- 36 He mentioned that the Bar's newest public education guide, *Seniors & the Law: A Guide for Maturing Californians*, will debut in the May issue of the *California Bar Journal*, and that copies are now available in both English and Spanish.
- 37 The new member search feature on the Bar's website is now up and running. He mentioned also that the California Association of Public Information Officials (CAPIO) had recently notified Kathleen Beitiks, the Bar's Web Editor, that its website had been selected to receive an award.
- 38 He mentioned that he had created an award entitled: Pride in the Profession, which would be bestowed on worthy recipients by the Board.

The Executive Director reported on the following:

1. Ms. Johnson announced that Joanne M. Garvey, former Board member, is the 2003 recipient of the ABA's prestigious Margaret Brent Award, which will be presented at a special luncheon to be held during the ABA's Annual Meeting in San Francisco in August.
2. She mentioned that the review process for the annual performance of the evaluations of the Executive Director and Chief Trial Counsel is in progress, that forms had been mailed to the relevant committee, with the request that the forms be returned in a timely manner.
3. She stated that April 1<sup>st</sup> was the last day for filing nominating petitions for the 2003 Annual Board of Governors Election, and that pertinent information is available on the website. She mentioned also that last year the Committee on Board Development, chaired by Board member Ms. Green, was charged with developing the duties and responsibilities of Board members and that this was adopted by the Board in September 2002. She stated that this document will be distributed to all candidates running in the 2003 Board of Governors election.

The roll-call vote was taken and upon motion made, seconded and unanimously adopted, it was

**RESOLVED** that the roll-call vote will be substituted for the vote unless otherwise noted.

All members present and recorded on the roll-call slip voted yes on the above matter.

- 55 The following is a report of emergency fax poll action taken by the Board between regularly scheduled meetings, March 24-28, 2003:

Upon motion made, seconded and unanimously adopted, it was

**RESOLVED** that the Board hereby approves the appointment of Vivian L. Kral to the Board Committee on Volunteer Involvement.

- 111 Upon motion made and seconded, the following was unanimously adopted:

**WHEREAS**, representatives of the State Bar of California ("State Bar") and Social Services Union Local 535, SEIU ("Union") have met and conferred pursuant to California Government Code sections 3505 and 3505.1 and the State Bar's Rules and Regulations for the Administration of Employer-Employee Relations, with a view to reaching agreement on the Memoranda of Understanding for the General and Attorney Bargaining Units to be effective in 2003 and 2004; and

**WHEREAS**, on March 28, 2003, representatives of the State Bar presented representatives of the Union with the State Bar's Best, Last and Final Offer on proposed amendments to the Memoranda of Understanding for the General and Attorney Bargaining Units to be effective in 2003 and 2004; and

**WHEREAS**, on April 9, 2003, the Union membership voted to ratify the proposed amendments; and

**WHEREAS**, the State Bar's Rules and Regulations for the Administration of Employer-Employee Relations provides at Sections 6.8 and 6.9 that the proposed Memoranda of Understanding be submitted to the Board of Governors for ratification and adoption; and

**WHEREAS**, the Board Committee on Operations is charged with Board oversight responsibility for the MOU negotiations;

**NOW THEREFORE, BE IT RESOLVED**, upon recommendation of the Board Committee on Operations, that the Board hereby ratifies and adopts the Memoranda of Understanding amendments for the General and Attorney Bargaining Units in the form discussed this date to be effective January 1, 2003; and it is

**FURTHER RESOLVED**, upon the recommendation of the Board Committee on Operations, that the Board hereby adopts and ratifies the Memoranda of Understanding amendments for the General and Attorney Bargaining Units in the form discussed this date to be effective January 1, 2003.

All members present and recorded on the roll-call slip voted yes on the above matter.

112 Upon motion made, seconded and unanimously adopted, it was

**RESOLVED**, upon the recommendation of the Board Committee on Operations, that the Board hereby reinstates Section 10.C [Salary Rates and Classifications] of the *Rules and Regulations Pertaining to the Employment of Confidential Employees* and adopts Appendix B, Confidential Monthly Salary Ranges, in the form this day before the Board, to be effective January 1, 2003.

All members present and recorded on the roll-call slip voted yes on the above matter.

113 Upon motion made, seconded and unanimously adopted, it was

**RESOLVED**, upon the recommendation of Board Committee on Operations, that the Board hereby determines that the per capita methodology of overhead allocation passed by the Council of State Bar Sections on April 4, 2003 shall remain in effect and cannot be changed without Board approval.

All members present and recorded on the roll-call slip voted yes on the above matter.

Mr. Ipsen entered the meeting at 10:00 a.m and his name was added to the roll-call vote.

701 The President introduced Victor Rowley, Senior Executive, IT, and Pamela Jester, Interim Executive Director, Continuing Education of the Bar (CEB), who each, in turn, addressed the Board regarding the work of CEB. The matters reported on included a brief history on CEB and its reconstituted Governing Committee, which resulted from the revised Memorandum of Understanding between the University of California and the State Bar, and which incorporated an agreement between the Bar's sections and CEB. Ms. Jester stated that the amended MOU clarified and strengthened the lines of responsibility and authority from the University, the Bar and the committee. She mentioned CEB's active relationship with sections, and with California Young Lawyers Association (CYLA). Mr. Herman thanked Mr. Rowley and Ms. Jester for their very informative presentation

Mr. Lindstrom entered the meeting at 10:30 a.m., and his name was added to the roll-call vote.

114 This matter concerning the President-Elect system was discussed in depth by the Board and, after taking action on eliminating the Fourth-Year Presidency system, as reported below, the issue of the Fifth-Year Presidency was deferred for further consideration at 4:30 p.m., following the Joint Meeting of the Board with the ABA President, Treasurer, State Bar delegates to the ABA House of Delegates, and representatives from the Bar Association of San Francisco.

114 Upon motion made, seconded and adopted, it was

**RESOLVED** that the Board hereby eliminates the concept of the Fourth-Year Presidency.

All members present and recorded on the roll-call slip voted yes on the above matter, except Mr. Marcus who abstained, and requested the record so to show.

115 Upon motion made, seconded and unanimously adopted, it was

**RESOLVED**, that upon recommendation of the Board Committee on Operations, the Board of Governors adopts the description of the President-Elect, in the form attached to these minutes and made a part hereof.

All members present and recorded on the roll-call slip voted yes on the above matter.

121 Mr. Persons, Chair, Board Committee on Regulation, Admissions and Discipline, stated that various financial and investment reports, together with the State Auditor's Report, will be presented to the two oversight committees and the Board in May.

131A Upon motion made, seconded and unanimously adopted, it was

**RESOLVED**, upon recommendation of the Board Committee on Member Oversight, that the Board hereby authorizes by an interim rule [new subsection J. of Article I, Section 6, *Rules and Regulations of the State Bar of California*], in the form attached to these minutes and made a part hereof, acceptance of online credit card payment of membership fees, pursuant to subdivision (b) of section 6140 of the *Business and Professions Code*, and be available immediately as a pilot project for new admittees between June 1, 2003, and September 1, 2003; and it is

**FURTHER RESOLVED** that the State Bar absorb all one-time costs associated with this pilot project; and it is

**FURTHER RESOLVED** that in order to begin implementation of the pilot project before notices are sent to new admittees in May, the proposed rule be adopted on an interim basis without prior public comment, pursuant to section 11 of the *Procedure for Adoption, Amendment or Repeal of State Bar Regulations*; and it is

**FURTHER RESOLVED** that the interim rule shall be published for a 90-day public comment period and that after considering all public comment and based on the response and effectiveness of the pilot program, the Board may determine on a permanent basis whether online payment should be made available to all members and whether or not members who choose to pay online by credit card should be charged an additional fee to defray the costs; and it is

**FURTHER RESOLVED** that the authorization for public comment shall not be construed as a statement of permanent approval of the rule.

All members present and recorded on the roll-call slip voted yes on the above matter.

131B Upon motion made, seconded and unanimously adopted, it was

**RESOLVED**, upon recommendation of the Board Committee on Member Oversight, that the Board hereby directs that the interim rule authorizing online credit card payment of membership fees also include payment of attorney discipline costs or client security fund restitution that have been added to a member's fees pursuant to Business and Professions Code section 6140.5 or section 6140.7, respectively.

All members present and recorded on the roll-call slip voted yes on the above matter.

131C Upon motion made, seconded and unanimously adopted, it was

**RESOLVED**, upon recommendation of the Board Committee on Member Oversight, that the Board hereby affirms that the use of State Bar list serves and message boards on the State Bar's Website shall be, in compliance with all applicable statutory provisions and governing rules and policies, for Bar purposes only, and its use shall be restricted to sections and other internal entities, or as may be expressly authorized by the Board; and it is

**FURTHER RESOLVED** that postings on the State Bar's Web Site of statements or materials that are defamatory, hate speech or other unlawful speech are prohibited; and it is

**FURTHER RESOLVED** that existing rules governing open and closed sessions of non-regulatory committees of the State Bar be reviewed to determine whether exceptions should be provided to permit meetings online where appropriate.

All members present and recorded on the roll-call slip voted yes on the above matter.

131D Upon motion made, seconded and adopted, it was

**RESOLVED**, upon recommendation of the Board Committee on Member Oversight, that for those members who provide, or wish to provide, e-mail addresses, the Board hereby provides that notice be given to: (i) clearly inform members that provision of any e-mail address is both optional and voluntary; (ii) give members the opportunity to designate whether such address(es) shall remain public or private; (iii) provide an explanation of how e-mail addresses, whether designated as public or private, will be used by the State Bar; and (iv) require members to give express consent to the purposes and use.

Voting yes: Mr. Capozzi, Mr. Cavanaugh, Ms. Green, Mr. Heiting, Mr. Ipsen, Mr. Lindstrom, Mr. Marcus, Mr. McLeod, Mr. Miliband, Mr. Persons, Mr. Roeca and Mr. Snetsinger.

Voting no: Ms. Scott, Ms. Tucker, Mr. Van de Kamp and Ms. Walker.

Abstaining: Ms. Hoffmeier Zamora.

131E Upon motion made, seconded and unanimously adopted, it was

**RESOLVED**, upon recommendation of the Board Committee on Member Oversight, that the Board, in conjunction with the Board Planning, Program Development, and Budget Committee and its Non-Dues Revenue Subcommittee, hereby resolves to explore changes to the State Bar's current advertising policy, and identify fiscal consequences, to support the fuller use of its website resources for revenue producing activities.

All members present and recorded on the roll-call slip voted yes on the above matter.

- 141 Mr. Capozzi, Chair, Board Planning, Program Development, and Budget Committee, reported briefly on the Bar's Strategic Initiatives and Operational Plan, stating that program managers and key staff members have begun identifying the resources necessary to implement the strategic initiatives.
- 142 Mr. Capozzi reported that the 2004 budget process began last March, that staff is developing budget input, and that the budget is scheduled to be completed by the end of May 2003.
- 143 Mr. Capozzi gave a brief update on the Bar's travel policy. He reminded Board members to submit their profiles to the designated staff person in order to activate their accounts with Sacramento Travel Service, and urged all Board members to use this travel agency, which offers cost-effective, government rates, when reserving flights that cost more than \$250.
- 151 Ms. Scott reported briefly on the status of outreach efforts to the Bar's advisory committees and commissions. She requested that staff provide the members of the Board Committee on Volunteer Involvement with a monthly calendar of the meetings of all Bar entities to better organize outreach to the volunteers.
- 152 This item regarding streamlining the Bar's committee appointment process was not addressed at this meeting.
- 161 There was no report from the Chief Legislative Counsel at this meeting.
- 162 There were no immediate legislative items presented to the Board at this meeting.
- 163 Upon motion made, seconded and adopted, it was

**RESOLVED**, upon recommendation of the Board Committee on Stakeholder Relations, that the Board hereby takes action as reported below on the following legislative matters:

**1. SB 337 (Romero) - Unauthorized Practice of Law: Limitations of Time:**

Supports unanimously.

All members present and recorded on the roll-call slip voted yes on this matter.

**2. AB 1180 (Harman) -Jury Duty:**

Supports.

All members present and recorded on the roll-call slip voted yes on this matter, except Mr. Cavanaugh and Mr. McLeod who voted no and requested the record so to show.

**3. SB 655 (Escutia) - California Court Facilities Construction and Renovation Bond Act of 2004:**

Supports.

All members present and recorded on the roll-call slip voted yes on this matter, except Mr. Ipsen who voted no, and Mr. Cavanaugh and Ms. Walker, who abstained, and requested the record so to show.

**4. AB 1165 (Dymally) - Appellate Opinions:**

Deferred by the Board to its May 2003 meeting.

702 The President introduced Herbert M. Rosenthal, President, and Greer McVay, Program Director, Foundation of the State Bar of California, and stated that it gave him great pleasure to present the Foundation's grants to the undermentioned, who were present to accept the checks on behalf of their various organizations. He introduced each representative and spoke briefly about the excellent work of each entity.

The Foundation's grant checks were presented to the following;

- Deborah Escobedo, Managing Attorney, Multicultural Education, Training, & Advocacy, Inc. (META).
- Rick McCracken, Executive Director, Family & Children's Law Center.
- Joe Wagenhofer, Resource Development Specialist, Positive Resource Center.
- Helen Smolinski, Staff Attorney, Lawyer's Committee for Civil Rights.
- Thomas T. McCormick, Treasurer, Board of Directors, Pauline Weaver, Board Member and Mike Zimmerman, Executive Director, Volunteers in Parole.

Mr. Rosenthal thanked the President for his gracious remarks.

Mr. Cavanaugh and Mr. Heiting disconnected from the meeting, and were unable to reconnect due to technical difficulties.

After lunch, the Board convened its joint meeting with ABA representatives A.P. Carlton, President, Allan Joseph, Treasurer, John McDonnell, ABA Board Member and Chair of its 2003 Annual Meeting Advisory Committee; and Pauline Weaver, Board Member-Elect, ABA.

The following members of the ABA's 2003 Annual Meeting Advisory Committee also were present: Edward E. Kallgren; Theodore A. Kolb; and Martha Whetstone, Executive Director of the Bar Association of San Francisco (BASF).



Also present were the following State Bar Delegates to the ABA House of Delegates: Marc P. Bouret; Beryl M. Crumpton; Joanne M. Garvey; Thomas W. McDonnell; and Mark L. Tuft.

- 71 The President introduced A.P. Carlton, President, American Bar Association (ABA), and other ABA representatives.

Mr. Carlton stated that it was a pleasure to have the opportunity of addressing the Board. He then distributed copies of the April 15, 2003, *Wall Street Journal* article "How Many Lawyers Does It Take....", his response to the that article and an American Bar Association press release regarding proposed lawyer conduct rules under Sarbanes-Oxley Act of 2002. Mr. Carlton emphasized his commitment to responding to attacks on lawyers and the legal profession. As an example, when the U.S. Chamber of Commerce began running anti-lawyer advertisements, he intervened and was successful in getting them pulled.

Throughout his presidency, Mr. Carlton has focused on three major issues: independence of the judiciary; independence of the profession; and the protection of fundamental American values. He noted that among the many items on the ABA's agenda is one to increase of salaries of both federal and state judges. He requested Board members present to support the ABA in these efforts. Another area that will be re-examined by the ABA is Model Rule 1.6 of the Professional Code of Conduct. Within the next month, the ABA will release its report on state judicial election and election reform.

Dennis Archer, president-elect, will continue the "bully" pulpit regarding the death penalty.

John McDonnell, Chair of the ABA's Annual Meeting Advisory Committee, stated that he would like California's ABA House of Delegate(HOD) representatives to be more cohesive. It is the largest and most diverse delegation in the ABA's HOD. Other members of the ABA delegation agreed and discussed how the HOD operates and how California lawyers can get involved. Joanne Garvey explained the importance of California's representation in the HOD and how the delegation's vote impacts ABA decisions affecting the legal profession.

Mr. Carlton noted that all ABA candidates for the Chair of the House of Delegates must interview with the California ABA HOD delegation. California was the state that initiated this process and since then, the other state delegations have followed California's lead.

Allan Joseph, ABA Treasurer, reported that \$95 million of the ABA's \$180 million budget is controlled by the Board of Governors. He also mentioned the already publically announced overrun on technology updates (nearly 100 percent). Mr. Joseph offered to discuss what the ABA has learned from this experience and what should be avoided when undertaking such an effort. Mr. Lindstrom and Mr. McLeod mentioned that they both would like to pursue discussions with Mr. Joseph regarding this topic.

The President thanked Mr. Carlton and those other ABA representatives who

addressed the Board, and commented that such joint meetings help to foster the relationship between the Board and the ABA.

The President then requested that the Board adopt a Certificate of Recognition, which he wished to present to Mr. Carlton on behalf of the Board and the membership, and stated that the framed resolution would be shipped to Mr. Carlton shortly.

71 Upon motion made and seconded, the following was unanimously adopted:

**THE STATE BAR OF CALIFORNIA  
HONORS  
ALFRED P. CARLTON, JR., ESQ.**

The State Bar of California is proud to recognize **ALFRED P. CARLTON, JR.**, and hereby acknowledges his significant contributions to the America Bar Association and its membership, the State Bar of California and its membership, the administration and equality of justice, the legal profession, the public interest and the people of the United States of America.

**WHEREAS, ALFRED P. CARLTON, JR.** received his B.S. Degree in Business Administration from the University of North Carolina at Chapel Hill in 1969, his Masters of Public Administration from the University of Dayton in 1973, and his J.D. from the University of North Carolina School of Law in 1975; and

**WHEREAS, ALFRED P. CARLTON, JR.** began his professional career as an officer in the U.S. Air Force Medical Service Corps, 1970-1973, was a solo practitioner, 1975-1977, served as counsel to the North Carolina Bankers Association, 1976-1979, served as secretary and general counsel to Bancshares of North Carolina from 1979 to 1982, and is currently a partner with Kilpatrick Stockton LLP, an international law firm with more the 500 attorneys; and

**WHEREAS,** he has been an active member of the ABA for most of his career and has served in a number of posts including, but not limited to, chairing the policy-making House of Delegates, the association's second highest office, the House Committee on Rules and Calendar, the Select Committee of the House, the Standing Committee on Continuing Education of the Bar, and has served as a member on numerous other ABA committees; and

**WHEREAS, ALFRED P. CARLTON, JR.** has been active in his local bar association, having served on the Board of Governors and the Foundation Development Committee, and chaired the Young Lawyers Division and the Law Student Activities Committee of the North Carolina Bar Association; and

**WHEREAS,** he is a member of the American Law Institute, the National Association of Bond Lawyers, is a fellow of the American Foundation, is a former member of the Chief Justice of North Carolina's Professionalism Commission, and is founding chairman of the State Law Resources, Inc., a national association of independent capital law firms; and

**WHEREAS, ALFRED P. CARLTON, JR.** is currently President of the American Bar Association, having assumed his office in August 2002, and, under his dedicated leadership, the ABA is focusing on improving the judicial system to better serve the people of America by providing a fair and impartial judiciary; and

**WHEREAS,** the State Bar of California expresses its sincere appreciation to the ABA leadership for their outstanding commitment to the IOLTA program nationwide, and acknowledges the enormous contributions of the ABA to the incredible success of the IOLTA litigation in the States of Washington and Texas, thereby ensuring that programs continue to be funded to make legal services available to low-income clients, who desperately need this lifeline to assist them in addressing their legal concerns; and

**WHEREAS, ALFRED P. CARLTON, JR.** is universally recognized as an exemplary member of the legal profession and who, throughout his career, has stood for the very best of his profession, working for the protection of the public, the equality of justice, and the preservation and improvement of our judiciary;

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Governors of the State Bar of California, on behalf of its membership, hereby acknowledges a public servant of the highest order, **ALFRED P. CARLTON, JR.**, and recognizes his outstanding career and lifelong dedication which he has rendered to the profession, the judicial system, the equality of justice, the public interest, and his community, and commends him as President of the ABA for his support of the IOLTA program nationwide, and for providing the members of the Board of Governors of the State Bar of California an opportunity to foster the relationship between the Bar and the ABA, with a view to cosponsoring some programs of mutual interest to both organizations in the future.

All member present and recorded on the roll-call slip voted yes on the above matter.

114 This matter relating to the principle of establishing a Fifth-Year Presidency system was again considered by the Board. Following a lengthy discussion, the Board took action as recorded below.

114 Upon motion made, seconded and adopted, it was

**RESOLVED** that the Board hereby adopts a President-Elect position as part of its governing Board; said officer to be elected by the Board from among those Board members whose terms on the expire that year, or if no such member is able to, and willing, to serve, then from among the Board members who have completed at least one or more years of their terms, to serve a fourth year as President-Elect and a fifth year as President, with the duties and an appropriate stipend to be set by the Board; and it is

**FURTHER RESOLVED** that staff is hereby directed to advise and draft appropriate legislation for the creation of a President-Elect position consistent with this resolution.

Voting yes: Mr. Capozzi, Mr. Ipsen, Mr. Lindstrom, Mr. Marcus, Mr. McLeod, Mr. Snetsinger and Mr. Van de Kamp.

Voting no: Ms. Green, Mr. Persons, Mr. Roeca, Ms. Scott, Ms. Tucker, Ms. Walker and Ms. Hoffmeier Zamora.

Because the vote on this issue was tied, the President exercised his prerogative to break the split vote, and voted yes on the above matter.

The Board adjourned at 5:15 p.m., Wednesday, April 16, 2003, to meet again at the call of the President at any time prior to the next regularly scheduled meeting of the Board or, if no such meeting be called, at the State Bar Office, 180 Howard Street, San Francisco, on Thursday, May 15, 2003.